

COMMONWEALTH OF MASSACHUSETTS

CITY OF LOWELL

In City Council

VOTE

Authorizing the City Manager to accept a Temporary Construction Easement and a Permanent Public Access Easement from Related Stirling Bay, LLC ("STIRLING") to the City of Lowell pertaining to the City's project, known as Concord River Greenway Project.

BE IT VOTED BY THE CITY COUNCIL OF THE CITY OF LOWELL, as follows:

That the City Manager be and hereby is authorized on behalf of the City of Lowell, to accept a Temporary Construction Easement and a Permanent Public Access Easement from Related Stirling Bay, LLC ("STIRLING") to the City of Lowell which involves property known as 576 Lawrence Street, which involves among other things, a temporary construction easement in the approximate area of 25,091 square feet over, under, in, along, across and upon STIRLING's PROPERTY to enable construction of the Concord River Greenway, in accordance with the Easement plan attached hereto. Said Amended Easement Agreement shall be in the form or substantially the form attached hereto and referred to as Exhibit "A"; and

The City Manager be and hereby is authorized on behalf of the City of Lowell, to accept a permanent public access easement for the permanent use by the CITY and its residents, guests, agents, employees, invitees and the general public a public walkway (the "WALKWAY") as part of the Concord River Greenway project on, upon, across, along and over STIRLING's PROPERTY in the approximate area of 2,980 square feet as depicted on the attached Easement plan and description attached hereto and made a part hereof and referred to as Exhibit "B" and "C". Said Amended Easement Agreement shall be in the form or substantially the form attached hereto and referred to as Exhibit "A".

AMENDED EASEMENT AGREEMENT

This Temporary Construction and Permanent Easement Agreement is made on the date set forth at the end hereof by and between: THE CITY OF LOWELL ("CITY"), a municipal corporation with principal offices at 375 Merrimack Street, City Hall, Lowell, Middlesex County, Massachusetts 01852; and RELATED STIRLING BAY, LLC ("STIRLING"), a Delaware Limited Liability Corporation at 60 Columbus Circle, New York, NY 10023. Together the CITY and STIRLING shall be referred to as the "PARTIES."

WHEREAS, STIRLING is the current owner of the 118 unit housing development located at 576 Lawrence Street, Lowell, Massachusetts; (the "PROPERTY"); and

WHEREAS, the CITY intends the construction of the Lowell Concord River Greenway and desires to have a temporary construction easement and a permanent public access easement along the Concord River boundary of the PROPERTY as shown on an initial "Easement Plan at 576 Lawrence Street, Lowell, Massachusetts" prepared by Owen Haskell, Inc. and as modified in the plan attached hereto as Attachment "A" and a legal description of said permanent easement attached hereto as Attachment "B as prepared by Surveying and Mapping Consultants, Inc.; and

WHEREAS, the PARTIES had entered into a prior Easement Agreement recorded in the Middlesex North Registry of Deeds on November 18, 2014 at Book 28629 Page 252 (the "Prior Easement Agreement"); and

WHEREAS, the location of the easement has been modified from the original plan and description as set forth in the Prior Easement Agreement and the PARTIES seek to have said Prior Easement Agreement amended herein to reference and include the new location of the easement in addition to the area referenced in the Prior Easement Agreement;

"A"

NOW THEREFORE, the PARTIES, for and in consideration of One Dollar (\$1.00) and the mutual promises, agreements and covenants herein contained, hereby agree as follows:

1. STIRLING hereby grants, transfers and delivers to the CITY a temporary construction easement in the approximate area of 25,091 square feet over, under, in, along, across and upon STIRLING's PROPERTY to enable construction of the Concord River Greenway, as depicted on the attached description and plan. The temporary construction easement shall commence on the effective date of this Agreement and shall terminate on the completion of the construction improvements. Upon the expiration of the temporary construction easement, all of the rights and benefits of the CITY in, to or under the temporary construction easement only shall terminate and be of no further force and effect.

2. In addition, STIRLING hereby covenants, grants, transfers and delivers to the CITY, its successors and assigns a permanent public access easement for the permanent use by the CITY and its residents, guests, agents, employees, invitees and the general public a public walkway (the "WALKWAY") as part of the Concord River Greenway project on, upon, across, along and over STIRLING's PROPERTY in the approximate area of 2,980 square feet as depicted on the attached plan and description. The CITY hereby accepts the permanent public access easement referenced herein subject to the conditions and obligations set forth below.

3. The CITY hereby agrees to construct and complete the said public access WALKWAY and to maintain same at no cost to STIRLING. In so agreeing, the CITY acknowledges the Notice of Activity and Use Limitation (M.G.L.c.21E, § 6 and 310 CMR 40.0000) recorded at the Northern Middlesex County Registry of Deeds on June 19, 2014 at Book 28252, Page 1.

4. The CITY further hereby agrees to repair any and all damage, if any, caused to the PROPERTY resulting from the construction and/or maintenance of said WALKWAY and to indemnify and hold harmless STIRLING up to any limit imposed by law from any claim, damage, liability, or related expense including reasonable attorney's fees arising out of or caused by any act or omission by the CITY and its employees arising or resulting from the construction and/or maintenance of said WALKWAY.

5. The CITY shall maintain the WALKWAY in good repair and at the sole cost and expense of the City and hereby indemnifies and holds harmless STIRLING up to any limit imposed by law from and against any loss, costs, expenses, including reasonable attorney's fees, damage, injury, claims or liability arising from or related to the use thereof as a public walkway.

6. The CITY agrees to take such steps as are reasonably necessary to assure that the public use of the easement granted hereby shall not interfere with (i) STIRLING's use of its PROPERTY for its day to day operations, and/or (ii) the use and enjoyment of the residents at the PROPERTY.

7. The provisions of this Easement Agreement shall inure to the benefit of and be binding upon the PARTIES hereto and their respective successors, assigns, mortgagees, and transferees, and upon all other persons or entities claiming by, through or under the CITY or STIRLING respectively.

8. The CITY agrees to reimburse to reimburse STIRLING for actual, reasonable costs incurred by STIRLING (upon submission by STIRLING to the CITY of the invoices), in an amount not to exceed \$ 6,365, for STIRLING's legal, survey, lender and title review fees with respect to this Agreement.

9. This Easement Agreement shall be duly recorded at the expense of the CITY at the Middlesex (North District) Registry of Deeds.

Executed as a sealed instrument this _____ day of _____, 2020.

CITY OF LOWELL

RELATED STIRLING BAY, LLC
A Delaware limited liability
Company

Eileen M. Donoghue
City Manager

By: Matthew Finkle
Vice President, duly authorized

APPROVED AS TO FORM:

Christine P. O'Connor, Esq.
City Solicitor

COMMONWEALTH OF MASSACHUSETTS

Middlesex, ss.

On this _____ day of _____, 2020, before me the undersigned Notary Public, personally appeared Eileen M. Donoghue, City Manager, proved to me through satisfactory evidence of identification, which was Notary's personal knowledge of the individual, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

On this _____ day of _____, 2020, before me the undersigned Notary Public, personally appeared _____, proved to me through satisfactory evidence of identification, which was Notary's _____, to be the person whose name is signed on the preceding document, and acknowledged to me that he signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

Permanent Easement #4

A certain easement on land situated in Lowell shown as Permanent Easement #4 on a plan entitled "Easement plan of land, Concord River Greenway, Lowell, MA", dated June 29, 2018, prepared by Surveying and Mapping Consultants Inc., said easement being more particularly bounded and described as follows:

Beginning at a point, that is the southeasterly corner of said easement, thence

S12°41'34"W a distance of 19.40 feet to a point, thence continuing

S12°41'34"W a distance of 2.07 feet to a point, thence continuing

S12°41'34"W a distance of 12.17 feet to a point, thence

N64°16'39"W a distance of 87.67 feet to a point, thence

N43°51'34"E a distance of 15.79 feet to a point, thence

S65°49'47"E a distance of 17.27 feet to a point, thence

N22°51'57"E a distance of 7.12 feet to a point, thence

N16°33'56"E a distance of 19.97 feet to a point, thence

N65°03'03"E a distance of 17.26 feet to a point, thence

S35°26'09"E a distance of 43.88 feet to a point, thence

S56°10'36"E a distance of 12.19 feet to the point of beginning.

Containing an area of 2,989 square feet, more or less.

Eileen M. Donoghue
City Manager

Kara Keefe Mullin
Assistant City Manager

January 28, 2020

Mayor John J. Leahy
and
Members of the City Council

SUBJECT: Temporary and Permanent Easements Related to the Concord River Greenway

Dear Mayor Leahy and Members of the City Council:

Attached please find for your consideration:

1. EASEMENT from Centennial Island Hydroelectric Company to the City of Lowell; and
2. EASEMENT from Related Stirling Bay, LLC to the City of Lowell

These temporary and permanent easements are intended to facilitate the development of the new phase of the Concord River Greenway (CRG). This project is anticipated to begin construction summer 2020 and include an extension of the CRG; including a new bridge across the Concord River to connect existing portions of the CRG.

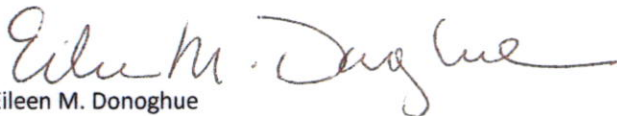
The attached instruments would allow the City of Lowell or its contractors to enter upon Related Stirling Bay and Centennial Island Hydroelectric property, stage and store construction materials in certain areas of its property, and construct permanent elements of the CRG.

The permanent easements would maintain public access over Related Stirling and Centennial Island Hydro property within the easement area along the Concord River. It would also allow the City to enter onto this easement area for CRG maintenance projects with advance notice.

Centennial Island Hydroelectric is donating these easements to the City, and will only be compensated if the CRG construction project shuts down operations. Related Stirling is also donating their easements, with the City agreeing to pay for costs associated with the survey of property and legal review of the attached easement.

The City Council voted in favor of previous easements in support of prior phases of this project, and we hope you will continue to support this important project. Once voted upon we will execute and record these easements. Please contact Diane Tradd at 978-674-1401 if you have any questions.

Sincerely,



Eileen M. Donoghue
City Manager

EMD/ns
Attachment

cc: Diane Tradd, Assistant City Manager/DPD Director
Christine P. O'Connor, City Solicitor
Brian Samson, Related Stirling
Kevin Olson, Centennial Hydroelectric Company